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FEDERAL ELECTION COMMISSION

**999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6969

DATE COMPLAINT FILED: September 25, 2015

DATE OF NOTIFICATION: October 1, 2015

DATE OF LAST RESPONSE: March 30, 2016

DATE ACTIVATED: April 22, 2016

EXPIRATION OF SOL:

Earliest: June 30, 2020

Latest: July 31, 2020

ELECTION CYCLE: 2016

COMPLAINANTS:

American Democracy Legal Fund

RESPONDENTS:

MMWP12 LLC

K2M LLC

Mark Kvamme

Megan Jean Browning Kvamme

Paul Johannsen

**New Day Independent Media Committee, Inc. and
Susan Jones in her official capacity as treasurer**

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. §§ 30102, 30103, 30104

52 U.S.C. § 30122

11 C.F.R. § 110.1(g)

11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

New Day Independent Media Committee, Inc. ("Committee"), an independent-expenditure-only political committee that supported the 2016 presidential campaign of Ohio Governor John Kasich, received a \$500,000 contribution that the Committee attributed to MMWP12 LLC, a limited liability company ("LLC") whose only member is another entity,

1 K2M LLC.¹ The Complaint alleges that K2M and its two officers, Mark Kvamme and Paul
2 Johannsen, violated Section 30122 of the Federal Election Campaign Act of 1971, as amended
3 ("Act"), by making that \$500,000 contribution in the name of MMWP12.² The Complaint also
4 asserts that MMWP12 knowingly facilitated, and the Committee knowingly accepted, a
5 contribution in the name of another.³ The Complaint further alleges that MMWP12 failed to
6 register with the Commission and file required disclosure reports despite meeting the Act's
7 standard for political committee status, and therefore violated the Act's registration,
8 recordkeeping, and reporting requirements.⁴

9 The facts here raise a reasonable inference that MMWP12 was not the true source of the
10 contribution, and that K2M and its owners, Mark and Megan Kvamme, may have made the
11 contribution in the name of MMWP12. The facts also indicate that the Committee may have
12 knowingly accepted a contribution in the name of another. We therefore recommend that the
13 Commission find reason to believe that MMWP12, K2M, Mark Kvamme, Megan Kvamme, and
14 the Committee violated 52 U.S.C. § 30122. However, for the reasons discussed below, we
15 recommend that the Commission take no action at this time as to the allegations against Paul
16 Johannsen, and as to the allegation that MMWP12 violated 52 U.S.C. §§ 30102, 30103, 30104
17 by failing to register and report as a political committee. We also recommend that the
18 Commission find reason to believe that the Committee violated 52 U.S.C. §§ 30103,
19 30104(a), (b) by failing to timely register as a political committee and file the appropriate

¹ See New Day Independent Media Cmte., Inc. ("Cmte."), Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

² Compl. at 3–4 (Sept. 25, 2015).

³ *Id.*

⁴ *Id.* at 5.

disclosure reports with the Commission.

II. FACTUAL BACKGROUND

A. Respondents

New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.⁵ It filed with the Commission as an independent-expenditure-only political committee on August 5, 2015, and Susan Jones is its treasurer of record.⁶ The Committee received the \$500,000 contribution at issue in this matter on June 30, 2015.⁷ The Committee has reported over five million dollars in independent expenditures supporting Kasich's 2016 presidential campaign.⁸

K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It is treated as a partnership for tax purposes under the Internal Revenue Code.⁹ K2M owns, either directly or through subsidiaries, real estate valued at approximately \$43.7 million.¹⁰

⁵ See Cmte. Internal Revenue Service ("IRS") Form 8871, "Political Organization – Notice of Section 527 Status." Because the Committee was organized as a nonprofit organization under Section 527 of the Internal Revenue Code, it initially filed a report with the IRS disclosing the MMWP12 contribution received on June 30, 2015. See Cmte. IRS Form 8872, "Political Organization – Report of Contributions and Expenditures," 2015 Mid-Year Report.

⁶ Cmte. Statement of Organization at 1 (Aug. 6, 2015).

⁷ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁸ See Cmte. Fed. Election Comm'n Schedule E: 24/48 Hour Report of Independent Expenditures ("IE Report") (Apr. 22, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 11, 2016); IE Report (Mar. 24, 2016); IE Report (Mar. 17, 2016); IE Report (Mar. 12, 2016); IE Report (Feb. 3, 2016); IE Report (Oct. 28, 2015); IE Report (Oct. 28, 2015); IE Report (Oct. 12, 2015); IE Report (Oct. 7, 2015); IE Report (Oct. 2, 2015); IE Report (Oct. 2, 2015); IE Report (Sept. 19, 2015); IE Report (Aug. 26, 2015); IE Report (Aug. 13, 2015). The Committee has also disclosed over \$664,000 worth of independent expenditures opposing the presidential campaigns of Donald Trump, Sen. Ted Cruz, and Sen. Marco Rubio. See IE Report (Apr. 13, 2016); IE Report (Apr. 7, 2016); IE Report (Mar. 31, 2016); IE Report (Feb. 5, 2016).

⁹ Megan Kvamme Decl. ¶ 22.

¹⁰ K2M and a "sister company" called PAa87, Inc. own another Montana company called Great Northern Ventures LLC ("GNV"), which in turn wholly owns GFY87, LLC. See Megan Kvamme Decl. ¶ 14; MMWP12

1 MMWP12 LLC is a Montana company formed on June 29, 2015.¹¹ It made a \$500,000
2 contribution to the Committee on June 30, 2015.¹² MMWP12 is tax-disregarded under the
3 Internal Revenue Code and has no set dissolution date.¹³ Its sole member is K2M LLC. Megan
4 Kvamme is MMWP12's President and Treasurer, and Mark Kvamme is its Vice President and
5 Secretary. Mark Kvamme is a venture capitalist, serves as an officer of MMWP12, and co-owns
6 K2M. He worked at Sequoia Capital in California before cofounding Drive Capital LLC, a
7 venture capital firm in Columbus, Ohio, in 2014.¹⁴ Kvamme is also a former member of
8 Kasich's administration: He served as an Ohio state development director and then as President
9 and Interim Chief Investment Officer of JobsOhio, a private development entity promoting job
10 growth in Ohio.¹⁵ Kvamme has not publicly confirmed or denied his connection to MMWP12.¹⁶

11 Paul Johannsen is a realtor and a managing partner at Great Northern Ventures LLC, a
12 K2M-owned company that owns some of the real estate properties that MMWP12 was allegedly
13 created to manage. Johannsen is also the sole owner and operator of PMJ LLC, a company

LLC, K2M LLC, Mark Kvamme, and Paul Johannsen Resp. ("MMWP12 Resp.") Ex. A (Nov. 23, 2015) ("GFY 87 LLC Property Holding Summary Apr-15").

¹¹ See MMWP12 LLC Business Record, MT Sec'y of State, https://app.mt.gov/cgi-bin/bes/besCertificate.cgi?action=detail&bessearch=C263566&trans_id=besa1534021383874bb00 (Dec. 7, 2015); MMWP12 LLC, Dun & Bradstreet Public Record Search Result (Dec. 7, 2015).

¹² Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

¹³ MMWP12 Resp. at 2-3; Megan Kvamme Decl. ¶ 1, 5-10.

¹⁴ See Dan Alexander, *Top Venture Capitalists Leave Silicon Valley, Bet Their Careers On Midwest*, FORBES (May 7, 2014 6:00 AM), <http://www.forbes.com/sites/danalexander/2014/05/07/top-venture-capitalists-leave-silicon-valley-bet-their-careers-on-midwest>.

¹⁵ *Id.*; see Mark Niquette, *Kasich's Bid Powered by Fans From Ohio and Lehman*, BLOOMBERG POLITICS (July 30, 2015 3:46 PM), <http://www.bloomberg.com/politics/articles/2015-07-30/kasich-s-bid-powered-by-fans-from-ohio-and-lehman>.

¹⁶ See Compl. at 3 (quoting Zachary Mider, *Another Way to Mask Super Rich Donors*, BLOOMBERG POLITICS (Aug. 21, 2015), <http://www.bloomberg.com/politics/articles/2015-08-21/another-way-to-mask-super-rich-donors> ("Reached by phone, Kvamme is happy to share his opinion of Kasich. "I worked for the guy," he says. "I saw him do what he did in Ohio. The guy is spectacular." But Kvamme won't talk about any connection to MMWP12. "Let them report whatever they want to report," he says. "I'm not confirming or denying. It is what it is.")).

1 which acts as MMWP12's real estate agent.¹⁷ He served as MMWP12's previous registered
2 agent, and has also assisted with day-to-day administrative tasks for MMWP12.¹⁸

3 **B. The Complaint and Responses**

4 The Complaint alleges that Mark Kvamme, Paul Johannsen, and K2M violated Section
5 30122 of the Act when they contributed \$500,000 to the Committee in the name of MMWP12 on
6 June 30, 2015.¹⁹ The Complaint essentially claims that the funds MMWP12 gave the Committee
7 were in fact transferred to it for the purpose of making a contribution, because "[t]here is no
8 indication that MMWP12 was created for any other reason than to donate \$500,000 to New
9 Day," and "[g]iven the lack of any revenue or income streams that would have allowed
10 [MMWP12] to give that contribution on its own, the donation it provided to New Day must have
11 come from outside sources — Mr. Kvamme, Mr. Johannsen, and/or K2M."²⁰ The Complaint
12 further alleges that the Committee violated the Act by knowingly accepting the contribution and
13 reporting it as coming from MMWP12 "even though [New Day] was almost certainly aware"
14 that Kvamme, Johannsen, and K2M were the true source.²¹ The Complaint also claims that

¹⁷ Megan Kvamme Decl. ¶ 17.

¹⁸ *Id.* ¶ 18.

¹⁹ The Committee did not initially disclose the MMWP12 contribution; it disclosed those funds by amending its 2015 Mid-Year Report on March 11, 2016, in response to a Request for Additional Information ("RAI") from the Reports Analysis Division ("RAD") issued on February 5, 2016. The \$500,000 that the Committee received from MMWP12 was clearly a "contribution" under the Act. See 52 U.S.C. § 30101(8)(A); see also MMWP12 Resp. at 3 ("Megan Kvamme authorized MMWP12 LLC to make a \$500,000 contribution to the Committee."); Megan Kvamme Decl. ¶ 19 ("On or about June 29, 2015, I spoke with Brooke Bodney, a representative of [New Day], concerning ways individuals and organization could help Ohio Governor John Kasich's presidential campaign.") (emphasis added); Cmte. Resp. at 2 ("[The Complaint] makes it clear that MMWP12 made a corporate contribution to New Day Media.") (emphasis added).

²⁰ Compl. at 5.

²¹ *Id.* at 2, 4 (citing Henry J. Gomez, *John Kasich's Super PAC Tapped Into His Longtime Core of Columbus Contributors*, CLEVELAND.COM (July 30, 2015), http://www.cleveland.com/open/index.ssf/2015/07/john_kasichs_super_pac_tapped.html); see Jessica Wehrman & Jack Torrey, *John Kasich's Donor List Has Ohio All Over It*, THE COLUMBUS DISPATCH (July 31, 2015 8:21 AM), <http://www.dispatch.com/content/stories/local/2015/07/30/john-kasich-new-day-for-america-cash.html> ("New Day . . . raised its \$600,000 from two donors, both

1 MMWP12 met the Act's threshold for political committee status and was therefore required to
2 meet the Act's registration, recordkeeping, and reporting requirements.²²

3 The Committee filed a Response arguing that the allegation that it knowingly accepted a
4 contribution in the name of another is directly contradicted within the Complaint, which
5 indicates that the \$500,000 contribution was made "without disclosing . . . the source of the
6 money to New Day."²³ The Committee also states that its contribution forms inform potential
7 donors that contributions in the name of another are prohibited, and it provided a sample form.²⁴

8 MMWP12, K2M, Mark Kvamme and Johannsen filed a joint Response, which Megan
9 Kvamme adopted.²⁵ They assert that MMWP12 was "conceived in April of 2015 as a business
10 entity" to manage the real estate properties held by K2M and its subsidiaries, by promoting and
11 renting out vacation homes on those properties and leasing the properties for other commercial
12 purposes.²⁶ Megan Kvamme avers that the day before MMWP12 gave \$500,000 to the
13 Committee, she spoke with the Committee's legal counsel and Brooke Bodney, a representative
14 for the Committee, about supporting Kasich's presidential campaign, and she informed them that

of whom gave on June 30. One donor was . . . a Whitefish, Mont., company called MMWP12 LLC. The company had incorporated the day before giving the donation. It gave \$500,000.").

²² *Id.* at 4–5; *see* 52 U.S.C. §§ 30102, 30103, 30104.

²³ Cmte. Resp. at 2 (Nov. 18, 2015); *see* Compl. at 3.

²⁴ Cmte. Resp. at 2, Ex. A.

²⁵ Megan Kvamme was provided notice and an opportunity to respond to the allegations after this office determined, based on the available facts, that her activities appear to fall within the scope of the alleged violations. *See* Letter from Jeff S. Jordan, Asst. Gen. Counsel, Fed. Election Comm'n, to Megan Kvamme (Mar. 10, 2016). She filed a Response that incorporated and adopted, in its entirety, the Response filed by MMWP12 LLC, K2M LLC, Mark Kvamme, and Paul Johannsen. *See* Megan Kvamme Resp. at 1 (Mar. 30, 2016).

²⁶ MMWP12 Resp. at 3; Megan Kvamme Decl. ¶ 16, 17 ("The creation of MMWP12 LLC was conceived in April of 2015."); *see also* MMWP12 Resp. Ex. B ("Short Term Vacation Rental Agreement" listing MMWP12 LLC as "Owner" of rental property).

1 an LLC would be making the contribution, which raised possible disclosure issues.²⁷

2 Respondents assert that MMWP12 then made a contribution to the Committee on June 30,
3 2015.²⁸

4 Respondents deny that MMWP12 was required to register as a political committee, on the
5 grounds that it is a single-member LLC — not a “group of persons” — and that its major purpose
6 is commercial, not political.²⁹ They also note that the Commission has failed to enact new rules
7 in light of *Citizens United* and *SpeechNow*, which has left the legal landscape for LLC
8 contributions difficult to navigate; in light of this “regulatory ambiguity,” they argue that the
9 Commission should dismiss the matter rather than “conduct[ing a] de facto rulemaking.”³⁰

10 III. FACTUAL AND LEGAL ANALYSIS

11 A. Legal Standard

12 1. Contributions in the Name of Another

13 The Act provides that a contribution includes “any gift, subscription, loan, advance, or
14 deposit of money or anything of value made by any person for the purpose of influencing any
15 election for Federal office.”³¹ The term “person” for purposes of the Act and Commission
16 regulations includes partnerships, corporations, and “any other organization or group of

²⁷ See Megan Kvamme Decl. ¶ 19, 23 (“On or about June 29, 2015, I spoke with Brooke Bodney, a representative of [New Day] concerning ways individuals and organizations could help Ohio Governor John Kasich’s presidential campaign . . . I highlighted to Brooke Bodney and the Committee’s counsel that an LLC would be making a contribution to the Committee [and] emphasized the importance of understanding how any applicable disclosure laws might apply to the contribution.”); MMWP12 Resp. at 3. The Committee does not address this allegation in its Response.

²⁸ MMWP12 Resp. at at 10.

²⁹ *Id.* at 12–13.

³⁰ *Id.* at 14–15; see also *Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

³¹ 52 U.S.C. § 30101(8)(A).

persons.”³² The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.³³ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.³⁴

The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.³⁵ Courts therefore have uniformly

³² *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

³³ 52 U.S.C. § 30122. *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*). In MUR 6930, we concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC’s operations and investments, not a transfer of funds from the owner’s personal accounts; and (3) the owner did not seek to use the LLC to evade the Act’s disclosure requirements. Accordingly, we recommended that the Commission find no reason to believe that Respondents violated § 30122. The Commission was equally divided on that issue, however, and closed the file. *See* Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other recently closed matters. *See* Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016).

³⁴ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

³⁵ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections

1 rejected the assertion that “only the person who actually transmits funds . . . makes the
2 contribution,”³⁶ recognizing that “it is implausible that Congress, in seeking to promote
3 transparency, would have understood the relevant contributor to be [an] intermediary who
4 merely transmitted the campaign gift.”³⁷ Consequently, both the Act and the Commission’s
5 implementing regulations provide that a person who furnishes another with funds for the purpose
6 of contributing to a candidate or committee “makes” the resulting contribution.³⁸ This is true
7 whether funds are advanced to another person to make a contribution in that person’s name or
8 promised as reimbursement of a solicited contribution.³⁹ Because the concern of the law is the
9 true source from which a contribution to a candidate or committee originates, we look to the
10 structure of the transaction itself and the arrangement between the parties to determine who in
11 fact “made” a given contribution.⁴⁰

— is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *O'Donnell*, 608 F.3d at 554; see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

³⁸ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

³⁹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the source of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

⁴⁰ As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

1 **2. Political Committee Status**

2 The Act defines a "political committee" as any committee, association, or other group of
3 persons that receives aggregate "contributions" or makes aggregate "expenditures" in excess of
4 \$1,000 during a calendar year.⁴¹ Notwithstanding the threshold for contributions and
5 expenditures, an organization will be considered a "political committee" only if its "major
6 purpose is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."⁴²
7 Political committees are required to register with the Commission, meet recordkeeping
8 requirements, and file periodic disclosure reports.⁴³

9 **B. The Facts Indicate that MMWP12 Was Not the True Source of the Funds**
10 **Contributed to the Committee**

11 On balance, the record indicates that MMWP12 may not have been the true source of the
12 funds that it gave to the Committee. The most suggestive fact in the record is that the entity gave
13 funds to the Committee *the day after* it was formed: Respondents assert that MMWP12 was
14 "conceived" in April 2015, but public records show that it did not legally exist until it was
15 organized on June 29, 2015, and it gave \$500,000 to the Committee the next day, June 30, 2015.
16 Respondents state that MMWP12 was created to manage real estate properties owned by K2M,
17 and that MMWP12's contribution was attributed to K2M and its owners, the Kvammes.⁴⁴

⁴¹ 52 U.S.C. § 30101(4)(A).

⁴² Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

⁴³ *See* 52 U.S.C. §§ 30102; 30103; 30104.

⁴⁴ Respondents assert that "for accounting purposes," the contribution was attributed to the LLC's sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee's disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission's attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different

1 Neither statement, however, resolves the Section 30122 inquiry: An LLC can be used as both a
2 legitimate business entity *and* a conduit,⁴⁵ and irrespective of how a contribution is ultimately
3 attributed, Section 30122 prohibits any person from knowingly receiving funds from another —
4 whether a natural person or an entity — to make a contribution in its own name. An LLC is a
5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.⁴⁶ In MUR 6930, the sole member of an
11 LLC that contributed to an independent-expenditure-only political committee provided a
12 detailed, sworn affidavit averring that the LLC was an active commercial entity used to collect

concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report at 11, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this context — since the contributions at issue here were made to independent-expenditure-only committees that are not subject to the Act’s contribution limits.”); Memorandum to the Comm’n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, at 8 (Apr. 8, 2014) (“[T]he purpose of the LLC rulemaking proceedings to resolve whether LLCs would be deemed corporate under the Act *has no bearing* on whether using an LLC as a mere conduit for a contribution violates [Section 30122].”) (emphasis added).

⁴⁵ *See* First Gen. Counsel’s Report at 16, MUR 6711 (Specialty Investment Group, *et al.*) (“[T]he fact that these entities claim to engage in legitimate business does not in itself dispose of the question whether they served as conduits for contributions in the name of another in violation of Section [30122].”).

⁴⁶ *See* Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); *see also* Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

1 and invest business income and assets, and noted, crucially, that any funds it held were not
2 provided to it for the purpose of making political contributions. Because that information was
3 sufficient to rebut the allegations, we recommended that the Commission make a no reason to
4 believe finding.⁴⁷ Here, by contrast, Respondents do not address the provenance of the funds
5 that MMWP12 gave to the Committee; they do not aver that the funds it contributed were not
6 provided to it for the purpose of making political contributions. As such, the record does not
7 rebut the factual basis of the allegation, and the temporal proximity of the contribution to
8 MMWP12's creation supports the conclusion that MMWP12 was not the true contributor.
9 Accordingly, we recommend that the Commission find reason to believe that MMWP12, K2M,
10 and K2M's owners, Mark and Megan Kvamme, violated 52 U.S.C. § 30122, and conduct
11 additional fact-finding.

12 Respondents assert that Johannsen executed the wire transfer of funds from MMWP12 to
13 the Committee, but had no further involvement in making the contribution.⁴⁸ However,
14 additional fact-finding may indicate that Johannsen's activities fall within the scope of the
15 alleged violations. We therefore recommend that the Commission take no action at this time as
16 to the allegations against Johannsen.

17 **C. The Facts Indicate that the Committee May Have Knowingly Accepted a**
18 **Contribution in the Name of Another**

19 The Complaint alleges that the Committee "was almost certainly aware" that MMWP12
20 was not the true source of the \$500,000 contribution,"⁴⁹ and the factual record supports that

⁴⁷ See First Gen. Counsel's Report at 8–10, MUR 6930 (Prakazrel "Pras" Michel, *et al.*).

⁴⁸ Megan Kvamme avers that Johannsen's only involvement was the "ministerial act" of executing her instruction to wire funds from MMWP12's account to the Committee; Johannsen "did not otherwise participate in the making of, or the decision to make, the contribution." MMWP12 Resp. at 3; see Megan Kvamme Decl. ¶ 21.

⁴⁹ Compl. at 3–4; see Cmte. Resp. at 2.

1 claim. Megan Kvamme avers that on June 29, 2015 — the day that MMWP12 was formed and
2 one day before the Committee received the \$500,000 contribution — she discussed supporting
3 Kasich's presidential campaign with Brooke Bodney, a representative of the Committee, and the
4 Committee's legal counsel. Kvamme asserts that during that discussion, she informed the
5 Committee that an LLC would be making the contribution, which she felt might raise possible
6 disclosure issues.⁵⁰ In its Response, the Committee did not address the substance of the
7 allegation raised in the Complaint or the alleged discussion with Megan Kvamme. Instead, the
8 Committee summarily argued that it "simply does not accept" contributions in the name of
9 another, citing the boilerplate language on its contribution form.⁵¹ The available record raises a
10 reasonable inference that the Committee knowingly accepted a contribution in the name of
11 another, and we therefore recommend that the Commission find reason to believe that the
12 Committee may have violated Section 30122.

13 **D. The Commission Should Take No Action at this Time as to the Allegation**
14 **that MMWP12 Was Required to Register and Report as a Committee**

15 MMWP12 does not appear to have been a "political committee" under the Act, and it was
16 therefore not required to comply with the Act's registration, recordkeeping, and reporting
17 requirements. The Complaint essentially alleges that MMWP12 was both a conduit *and* a
18 political committee. However, the available facts indicate that MMWP12 may not have made
19 any contributions itself and was just conveying the funds of the true contributors.⁵² If further
20 fact-finding supports this view, then MMWP12 would not satisfy the statutory threshold for

⁵⁰ See Megan Kvamme Decl. ¶ 19, 23.

⁵¹ Cmte. Resp. at 2, Ex. A.

⁵² See 52 U.S.C. § 30101(4)(A); First Gen. Counsel's Report at 14, MUR 6485 (W Spann LLC); *see also* Advisory Op. 1996-18 at 2-3 (Int'l Ass'n of Fire Fighters) (June 14, 1996) ("The conduit [account of labor union's separate segregated fund], therefore, is not accepting or making contributions for the purposes of the Act and is not a political committee that would have to report the receipt and disbursement of such funds.").

1 political committee status.⁵³ We therefore recommend that the Commission take no action at this
2 time as to the allegation that MMWP12 violated the Act for failing to register and report as a
3 political committee:

4 **E. The Committee Did Not Timely Register as a Political Committee or**
5 **Properly Report its Receipts to the Commission**

6 The Committee initially organized as a Section 527 organization under the Internal
7 Revenue Code. It reported to the Internal Revenue Service that it received two contributions
8 totaling \$600,000 — including the contribution at issue in this matter — on June 30, 2015.⁵⁴
9 However, the Committee did not meet its obligations under the Act to register as a political
10 committee and report those two contributions to the Commission. The Committee's receipt of
11 \$600,000 in contributions triggered political committee status on June 30, 2015,⁵⁵ and it was
12 required to register with the Commission within 10 days, or by July 10, 2015.⁵⁶ The Committee
13 was therefore required to file a 2015 Mid-Year Report disclosing the \$600,000 in contributions
14 that it received on June 30, the last day of the reporting period. That report was due by July 31,
15 2015, but the Committee never filed it.

16 After it registered with the Commission on August 5, 2015, the first periodic disclosure
17 report that the Committee filed was its 2015 Year-End Report. That report, however, did not
18 disclose the MMWP12 contribution and several other contributions that the Committee received

⁵³ See 52 U.S.C. § 30101(4)(A). Moreover, it is unclear whether a single-member LLC like MMWP12 could even qualify as a political committee, which requires a "committee, club, association, or other group of persons."

⁵⁴ See Cmte. IRS Form 8872, 2015 Mid-Year Report. The second contribution reportedly received on June 30, 2015 was \$100,000 from an attorney in Pacific Palisades, CA.

⁵⁵ See 52 U.S.C. § 30101(4)(A).

⁵⁶ *Id.* § 30103(a).

1 before it registered with the Commission.⁵⁷ Instead, the Committee disclosed a beginning cash-
2 on-hand balance with no corresponding entries to explain the provenance of those funds, which
3 amounted to over \$2.3 million.⁵⁸ As a result, the sources of those funds were not properly
4 reported to the Commission and the voting public until the Committee amended its report on
5 March 11, 2016; by that point, the Committee had made over \$4.4 million in independent
6 expenditures supporting Kasich's presidential campaign.⁵⁹ In sum, because the Committee did
7 not meet its disclosure obligations, the Commission learned of the MMWP12 contribution over
8 seven months later than the Act required, *i.e.*, on March 11, 2016, instead of July 31, 2015.⁶⁰
9 Accordingly, we recommend that the Commission find reason to believe that the Committee
10 violated 52 U.S.C. §§ 30103, 30104(a), (b).

11 IV. PROPOSED INVESTIGATION

12 We propose to seek further information about whether MMWP12 was financially capable
13 of making the contribution at issue without an infusion of outside funds; we also intend to seek
14 information regarding any financial transactions that preceded the contribution, *i.e.* whether
15 funds were transferred to MMWP12 from K2M, its owners or subsidiaries, or another source,
16 and, if so, for what purpose. We further intend to seek information about any communications

⁵⁷ See *id.* § 30104(a), (b). In its 2015 Year-End Report, the Committee did not disclose the two contributions it received on June 30, 2015, or the contributions totaling \$1,755,000 that it received between July 1, 2015, and July 31, 2015. See Cmte. IRS Form 8872, 2015 Year-End Report; Cmte. 2015 Year-End Report (Jan. 31, 2016). Instead, it reported an unexplained beginning cash-on-hand balance, prompted RAD to send the Committee an RFAI on Feb. 5, 2016. In response to the RFAI, the Committee amended its 2015 Year-End Report to account for its beginning cash-on-hand balance of \$2,344,669.62, which included the \$500,000 it received from MMWP12. See Cmte. Amended 2015 Year-End Report at 8.

⁵⁸ Cmte. 2015 Year-End Report (Jan. 31, 2016).

⁵⁹ During this period, the Committee also reported making \$38,190 in independent expenditures to oppose the presidential candidacy of Marco Rubio. See IE Report (Feb 5, 2016).

⁶⁰ During this period, over 25 states and territories held presidential primaries or caucuses to elect delegates to the 2016 Republican National Convention.

1 regarding the \$500,000 contribution between the Committee and all owners, agents or officers of
2 MMWP12, K2M, and K2M's subsidiaries, including Mark and Megan Kvamme, and Paul
3 Johannsen. We will attempt to conduct our investigation through voluntary means, to the extent
4 possible, but we recommend that the Commission authorize the use of compulsory process.

5 **V. RECOMMENDATIONS**

- 6 1. Find reason to believe that MMWP12 LLC, K2M LLC, Mark Kvamme, Megan Jean
7 Browning Kvamme, New Day Independent Media Committee, Inc., and Susan Jones
8 in her official capacity as treasurer violated 52 U.S.C. § 30122;
- 9 2. Take no action at this time as to the allegation that Paul Johannsen violated 52 U.S.C.
10 § 30122;
- 11 3. Take no action at this time as to the allegation that MMWP12 LLC violated 52 U.S.C.
12 §§ 30102, 30103, 30104;
- 13 4. Find reason to believe that New Day Independent Media Committee, Inc. and Susan
14 Jones in her official capacity as treasurer violated 52 U.S.C. §§ 30103, 30104(a), (b).
- 15 5. Approve the attached Factual and Legal Analyses;
- 16 6. Authorize the use of compulsory process, as necessary; and

7. Approve the appropriate letters.

Date:

8/5/16


Daniel Petalas

Acting General Counsel



Kathleen Guith

Acting Associate General Counsel for Enforcement



Mark Shonkwiler

Assistant General Counsel



Saurav Ghosh

Attorney

Attachments

1. Factual and Legal Analysis – MMWP12 LLC
2. Factual and Legal Analysis – K2M LLC
3. Factual and Legal Analysis – Mark Kvamme
4. Factual and Legal Analysis – Megan Jean Browning Kvamme
5. Factual and Legal Analysis – New Day Independent Media Committee, Inc. and Susan Jones in her official capacity as treasurer

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT: MMWP12 LLC**

MUR: 6969

4
5 **I. GENERATION OF MATTER**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 (“Commission”) by the American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1). New
8 Day Independent Media Committee, Inc. (“Committee”), an independent-expenditure-only
9 political committee that supported the 2016 presidential campaign of Ohio Governor John
10 Kasich, received a \$500,000 contribution that the Committee attributed to MMWP12 LLC, a
11 limited liability company (“LLC”) whose only member is another entity, K2M LLC. The
12 Complaint alleges that K2M and its two officers, Mark Kvamme and Paul Johannsen, violated
13 Section 30122 of the Federal Election Campaign Act of 1971, as amended (“Act”), by making
14 that \$500,000 contribution in the name of MMWP12. The Complaint also asserts that
15 MMWP12 knowingly facilitated, and the Committee knowingly accepted, a contribution in the
16 name of another. The Complaint further alleges that MMWP12 failed to register with the
17 Commission and file required disclosure reports despite meeting the Act’s standard for political
18 committee status, and therefore violated the Act’s registration, recordkeeping, and reporting
19 requirements. For the reasons explained below, the Commission finds reason to believe that
20 MMWP12 LLC violated 52 U.S.C. § 30122 by knowingly permitting its name to be used to
21 effect a contribution in the name of another.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as
4 a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.¹ It filed
5 with the Commission as an independent-expenditure-only political committee on August 5, 2015,
6 and Susan Jones is its treasurer of record.² The Committee received the \$500,000 contribution at
7 issue in this matter on June 30, 2015.³ The Committee has reported over five million dollars in
8 independent expenditures supporting Kasich's 2016 presidential campaign.⁴

9 K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme
10 and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It
11 is treated as a partnership for tax purposes under the Internal Revenue Code.⁵ K2M owns, either
12 directly and through subsidiaries, real estate valued at approximately \$43.7 million.⁶

¹ See Cmte. Internal Revenue Service ("IRS") Form 8871, "Political Organization – Notice of Section 527 Status." Because the Committee was organized as a nonprofit organization under Section 527 of the Internal Revenue Code, it initially filed a report with the IRS disclosing the MMWP12 contribution received on June 30, 2015. See Cmte. IRS Form 8872, "Political Organization – Report of Contributions and Expenditures," 2015 Mid-Year Report.

² Cmte. Statement of Organization at 1 (Aug. 6, 2015).

³ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁴ See Cmte. Fed. Election Comm'n Schedule E: 24/48 Hour Report of Independent Expenditures ("IE Report") (Apr. 22, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 11, 2016); IE Report (Mar. 24, 2016); IE Report (Mar. 17, 2016); IE Report (Mar. 12, 2016); IE Report (Feb. 3, 2016); IE Report (Oct. 28, 2015); IE Report (Oct. 28, 2015); IE Report (Oct. 12, 2015); IE Report (Oct. 7, 2015); IE Report (Oct. 2, 2015); IE Report (Oct. 2, 2015); IE Report (Sept. 19, 2015); IE Report (Aug. 26, 2015); IE Report (Aug. 13, 2015). The Committee has also disclosed over \$664,000 worth of independent expenditures opposing the presidential campaigns of Donald Trump, Sen. Ted Cruz, and Sen. Marco Rubio. See IE Report (Apr. 13, 2016); IE Report (Apr. 7, 2016); IE Report (Mar. 31, 2016); IE Report (Feb. 5, 2016).

⁵ Megan Kvamme Decl. ¶ 22.

⁶ K2M and a "sister company" called PAa87, Inc. own another Montana company called Great Northern Ventures LLC ("GNV"), which in turn wholly owns GFY87, LLC. See Megan Kvamme Decl. ¶ 14; MMWP12

1 MMWP12 LLC is a Montana company formed on June 29, 2015.⁷ It made a \$500,000
2 contribution to the Committee on June 30, 2015.⁸ MMWP12 is tax-disregarded under the
3 Internal Revenue Code and has no set dissolution date.⁹ Its sole member is K2M LLC. Megan
4 Kvamme is MMWP12's President and Treasurer, and Mark Kvamme is its Vice President and
5 Secretary. Mark Kvamme is a venture capitalist, serves as an officer of MMWP12, and co-owns
6 K2M. He worked at Sequoia Capital in California before cofounding Drive Capital LLC, a
7 venture capital firm in Columbus, Ohio, in 2014.¹⁰ Kvamme is also a former member of
8 Kasich's administration: He served as an Ohio state development director and then as President
9 and Interim Chief Investment Officer of JobsOhio, a private development entity promoting job
10 growth in Ohio.¹¹ Kvamme has not publicly confirmed or denied his connection to MMWP12.¹²

LLC, K2M LLC, Mark Kvamme, and Paul Johannsen Resp. ("MMWP12 Resp.") Ex. A (Nov. 23, 2015) ("GFY 87 LLC Property Holding Summary Apr-15").

⁷ See MMWP12 LLC Business Record, MT Sec'y of State, https://app.mt.gov/cgi-bin/bes/besCertificate.cgi?action=detail&bessearch=C263566&trans_id=besa1534021383874bb00 (Dec. 7, 2015); MMWP12 LLC, Dun & Bradstreet Public Record Search Result (Dec. 7, 2015).

⁸ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁹ MMWP12 Resp. at 2-3; Megan Kvamme Decl. ¶ 1, 5-10.

¹⁰ See Dan Alexander, *Top Venture Capitalists Leave Silicon Valley, Bet Their Careers On Midwest*, FORBES (May 7, 2014 6:00 AM), <http://www.forbes.com/sites/danalexander/2014/05/07/top-venture-capitalists-leave-silicon-valley-bet-their-careers-on-midwest>.

¹¹ *Id.*; see Mark Niquette, *Kasich's Bid Powered by Fans From Ohio and Lehman*, BLOOMBERG POLITICS (July 30, 2015 3:46 PM), <http://www.bloomberg.com/politics/articles/2015-07-30/kasich-s-bid-powered-by-fans-from-ohio-and-lehman>.

¹² See Compl. at 3 (quoting Zachary Mider, *Another Way to Mask Super Rich Donors*, BLOOMBERG POLITICS (Aug. 21, 2015), <http://www.bloomberg.com/politics/articles/2015-08-21/another-way-to-mask-super-rich-donors> ("Reached by phone, Kvamme is happy to share his opinion of Kasich. 'I worked for the guy,' he says. 'I saw him do what he did in Ohio. The guy is spectacular.' But Kvamme won't talk about any connection to MMWP12. 'Let them report whatever they want to report,' he says. 'I'm not confirming or denying. It is what it is.'")).

B. Legal Standard

1. Contributions in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹³ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”¹⁴ The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁵ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

¹³ 52 U.S.C. § 30101(8)(A).

¹⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁵ 52 U.S.C. § 30122. In MUR 6930 (Prakazrel “Pras” Michel, *et al.*), the Office of the General Counsel (“OGC”) concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC’s operations and investments, not a transfer of funds from the owner’s personal accounts; and (3) the owner did not seek to use the LLC to evade the Act’s disclosure requirements. Accordingly, OGC recommended that the Commission find no reason to believe that Respondents violated § 30122. *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*). The Commission was equally divided on that issue, however, and closed the file. *See* Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other recently closed matters. *See* Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016).

- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁶

The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.¹⁷ Courts therefore have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the contribution,"¹⁸ recognizing that "it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift."¹⁹ Consequently, both the Act and the Commission's implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution.²⁰ This is true whether funds are advanced to another person to make a contribution in that person's name or promised as reimbursement of a solicited contribution.²¹ Because the concern of the law is the true source from which a

¹⁶ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

¹⁷ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

¹⁸ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁹ *O'Donnell*, 608 F.3d at 554; *see also Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

²⁰ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

1 contribution to a candidate or committee originates, the Commission must look to the structure of
2 the transaction itself and the arrangement between the parties to determine who in fact “made” a
3 given contribution.²²

4 **C. Discussion**

5 1. The Facts Indicate that MMWP12 Was Not the True Source of the Funds
6 Contributed to the Committee

7 On balance, the record indicates that MMWP12 may not have been the true source of the
8 funds that it gave to the Committee. The most suggestive fact in the record is that the entity gave
9 funds to the Committee *the day after* it was formed: Respondents assert that MMWP12 was
10 “conceived” in April 2015, but public records show that it did not legally exist until it was
11 organized on June 29, 2015, and it gave \$500,000 to the Committee the next day, June 30, 2015.
12 Respondents state that MMWP12 was created to manage real estate properties owned by K2M,
13 and that MMWP12’s contribution was attributed to K2M and its owners, the Kvammes.²³

²¹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the source of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²² As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²³ Respondents assert that “for accounting purposes,” the contribution was attributed to the LLC’s sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee’s disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission’s attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report at 11, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this

1 Neither statement, however, resolves the Section 30122 inquiry: An LLC can be used as both a
2 legitimate business entity *and* a conduit,²⁴ and irrespective of how a contribution is ultimately
3 attributed, Section 30122 prohibits any person from knowingly receiving funds from another —
4 whether a natural person or an entity — to make a contribution in its own name. An LLC is a
5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.²⁵ Respondents do not address the
11 provenance of the funds that MMWP12 gave to the Committee; they do not aver that the funds it
12 contributed were not provided to it for the purpose of making political contributions. As such,

context — since the contributions at issue here were made to independent-expenditure-only committees that are not subject to the Act’s contribution limits.”); Memorandum to the Comm’n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, at 8 (Apr. 8, 2014) (“[T]he purpose of the LLC rulemaking proceedings to resolve whether LLCs would be deemed corporate under the Act *has no bearing* on whether using an LLC as a mere conduit for a contribution violates [Section 30122].”) (emphasis added).

²⁴ See First Gen. Counsel’s Report at 16, MUR 6711 (Specialty Investment Group, *et al.*) (“[T]he fact that these entities claim to engage in legitimate business does not in itself dispose of the question whether they served as conduits for contributions in the name of another in violation of Section [30122].”).

²⁵ See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); see also Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

1 the record does not rebut the factual basis of the allegation, and the temporal proximity of the
2 contribution to MMWP12's creation supports the conclusion that MMWP12 was not the true
3 contributor. Accordingly, the Commission finds reason to believe that MMWP12 violated
4 52 U.S.C. § 30122.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT: K2M LLC**

MUR: 6969

4
5 **I. GENERATION OF MATTER**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 ("Commission") by the American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1). New
8 Day Independent Media Committee, Inc. ("Committee"), an independent-expenditure-only
9 political committee that supported the 2016 presidential campaign of Ohio Governor John
10 Kasich, received a \$500,000 contribution that the Committee attributed to MMWP12 LLC, a
11 limited liability company ("LLC") whose only member is another entity, K2M LLC. The
12 Complaint alleges that K2M and its two officers, Mark Kvamme and Paul Johannsen, violated
13 Section 30122 of the Federal Election Campaign Act of 1971, as amended ("Act"), by making
14 that \$500,000 contribution in the name of MMWP12. The Complaint also asserts that
15 MMWP12 knowingly facilitated, and the Committee knowingly accepted, a contribution in the
16 name of another. The Complaint further alleges that MMWP12 failed to register with the
17 Commission and file required disclosure reports despite meeting the Act's standard for political
18 committee status, and therefore violated the Act's registration, recordkeeping, and reporting
19 requirements.

20 For the reasons explained below, the Commission finds reason to believe that K2M LLC
21 violated 52 U.S.C. § 30122 by making a contribution in the name of another.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as
4 a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.¹ It filed
5 with the Commission as an independent-expenditure-only political committee on August 5, 2015,
6 and Susan Jones is its treasurer of record.² The Committee received the \$500,000 contribution at
7 issue in this matter on June 30, 2015.³ The Committee has reported over five million dollars in
8 independent expenditures supporting Kasich's 2016 presidential campaign.⁴

9 K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme
10 and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It
11 is treated as a partnership for tax purposes under the Internal Revenue Code.⁵ K2M owns, either
12 directly and through subsidiaries, real estate valued at approximately \$43.7 million.⁶

¹ See Cmte. Internal Revenue Service ("IRS") Form 8871, "Political Organization – Notice of Section 527 Status." Because the Committee was organized as a nonprofit organization under Section 527 of the Internal Revenue Code, it initially filed a report with the IRS disclosing the MMWP12 contribution received on June 30, 2015. See Cmte. IRS Form 8872, "Political Organization – Report of Contributions and Expenditures," 2015 Mid-Year Report.

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1 MMWP12 LLC is a Montana company formed on June 29, 2015.⁷ It made a \$500,000
2 contribution to the Committee on June 30, 2015.⁸ MMWP12 is tax-disregarded under the
3 Internal Revenue Code and has no set dissolution date.⁹ Its sole member is K2M LLC. Megan
4 Kvamme is MMWP12's President and Treasurer, and Mark Kvamme is its Vice President and
5 Secretary. Mark Kvamme is a venture capitalist, serves as an officer of MMWP12, and co-owns
6 K2M. He worked at Sequoia Capital in California before cofounding Drive Capital LLC, a
7 venture capital firm in Columbus, Ohio, in 2014.¹⁰ Kvamme is also a former member of
8 Kasich's administration: He served as an Ohio state development director and then as President
9 and Interim Chief Investment Officer of JobsOhio, a private development entity promoting job
10 growth in Ohio.¹¹ Kvamme has not publicly confirmed or denied his connection to MMWP12.¹²

LLC, K2M LLC, Mark Kvamme, and Paul Johannsen Resp. ("MMWP12 Resp.") Ex. A (Nov. 23, 2015) ("GFY 87 LLC Property Holding Summary Apr-15").

⁷ See MMWP12 LLC Business Record, MT Sec'y of State, https://app.mt.gov/cgi-bin/bes/besCertificate.cgi?action=detail&bessearch=C263566&trans_id=besa1534021383874bb00 (Dec. 7, 2015); MMWP12 LLC, Dun & Bradstreet Public Record Search Result (Dec. 7, 2015).

⁸ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁹ MMWP12 Resp. at 2-3; Megan Kvamme Decl. ¶ 1, 5-10.

¹⁰ See Dan Alexander, *Top Venture Capitalists Leave Silicon Valley, Bet Their Careers On Midwest*, FORBES (May 7, 2014 6:00 AM), <http://www.forbes.com/sites/danalexander/2014/05/07/top-venture-capitalists-leave-silicon-valley-bet-their-careers-on-midwest>.

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B. Legal Standard

1. Contributions in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹³ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”¹⁴ The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁵ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

¹³ 52 U.S.C. § 30101(8)(A).

¹⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁵ 52 U.S.C. § 30122. In MUR 6930 (Prakazrel “Pras” Michel, *et al.*), the Office of the General Counsel (“OGC”) concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC’s operations and investments, not a transfer of funds from the owner’s personal accounts; and (3) the owner did not seek to use the LLC to evade the Act’s disclosure requirements. Accordingly, OGC recommended that the Commission find no reason to believe that Respondents violated § 30122. *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*). The Commission was equally divided on that issue, however, and closed the file. *See* Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other recently closed matters. *See* Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016).

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2 (ii) Making a contribution of money or anything of value and attributing as
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4 the contributor is the source.¹⁶
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6 The requirement that a contribution be made in the name of its true source promotes
7 Congress's objective of ensuring the complete and accurate disclosure by candidates and
8 committees of the political contributions they receive.¹⁷ Courts therefore have uniformly rejected
9 the assertion that "only the person who actually transmits funds . . . makes the contribution,"¹⁸
10 recognizing that "it is implausible that Congress, in seeking to promote transparency, would have
11 understood the relevant contributor to be [an] intermediary who merely transmitted the campaign
12 gift."¹⁹ Consequently, both the Act and the Commission's implementing regulations provide that
13 a person who furnishes another with funds for the purpose of contributing to a candidate or
14 committee "makes" the resulting contribution.²⁰ This is true whether funds are advanced to
15 another person to make a contribution in that person's name or promised as reimbursement of a
16 solicited contribution.²¹ Because the concern of the law is the true source from which a

¹⁶ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

¹⁷ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

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¹⁹ *O'Donnell*, 608 F.3d at 554; *see also Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

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1 contribution to a candidate or committee originates, the Commission must look to the structure of
2 the transaction itself and the arrangement between the parties to determine who in fact “made” a
3 given contribution.²²

4 C. Discussion

5 1. The Facts Indicate that MMWP12 Was Not the True Source of the Funds 6 Contributed to the Committee

7 On balance, the record indicates that MMWP12 may not have been the true source of the
8 funds that it gave to the Committee. The most suggestive fact in the record is that the entity gave
9 funds to the Committee *the day after* it was formed: Respondents assert that MMWP12 was
10 “conceived” in April 2015, but public records show that it did not legally exist until it was
11 organized on June 29, 2015, and it gave \$500,000 to the Committee the next day, June 30, 2015.
12 Respondents state that MMWP12 was created to manage real estate properties owned by K2M,
13 and that MMWP12’s contribution was attributed to K2M and its owners, the Kvammes.²³

²¹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the source of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²² As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²³ Respondents assert that “for accounting purposes,” the contribution was attributed to the LLC’s sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee’s disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission’s attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report at 11, MUR 6930 (Prakazrel “Pras” Michel, et al.) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this

1 Neither statement, however, resolves the Section 30122 inquiry: An LLC can be used as both a
2 legitimate business entity *and* a conduit,²⁴ and irrespective of how a contribution is ultimately
3 attributed, Section 30122 prohibits any person from knowingly receiving funds from another —
4 whether a natural person or an entity — to make a contribution in its own name. An LLC is a
5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.²⁵ Respondents do not address the
11 provenance of the funds that MMWP12 gave to the Committee; they do not aver that the funds it
12 contributed were not provided to it for the purpose of making political contributions. As such,

context — since the contributions at issue here were made to independent-expenditure-only committees that are not subject to the Act’s contribution limits.”); Memorandum to the Comm’n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, at 8 (Apr. 8, 2014) (“[T]he purpose of the LLC rulemaking proceedings to resolve whether LLCs would be deemed corporate under the Act *has no bearing* on whether using an LLC as a mere conduit for a contribution violates [Section 30122].”) (emphasis added).

²⁴ See First Gen. Counsel’s Report at 16, MUR 6711 (Specialty Investment Group, *et al.*) (“[T]he fact that these entities claim to engage in legitimate business does not in itself dispose of the question whether they served as conduits for contributions in the name of another in violation of Section [30122].”).

²⁵ See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); see also Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

1 the record does not rebut the factual basis of the allegation, and the temporal proximity of the
2 contribution to MMWP12's creation supports the conclusion that MMWP12 was not the true
3 contributor. Accordingly, the Commission finds reason to believe that K2M LLC violated
4 52 U.S.C. § 30122.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Mark Kvamme

MUR: 6969

4
5 **I. GENERATION OF MATTER**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 ("Commission") by the American Democracy Legal Fund. See 52 U.S.C. § 30109(a)(1). New
8 Day Independent Media Committee, Inc. ("Committee"), an independent-expenditure-only
9 political committee that supported the 2016 presidential campaign of Ohio Governor John
10 Kasich, received a \$500,000 contribution that the Committee attributed to MMWP12 LLC, a
11 limited liability company ("LLC") whose only member is another entity, K2M LLC. The
12 Complaint alleges that K2M and its two officers, Mark Kvamme and Paul Johannsen, violated
13 Section 30122 of the Federal Election Campaign Act of 1971, as amended ("Act"), by making
14 that \$500,000 contribution in the name of MMWP12. The Complaint also asserts that
15 MMWP12 knowingly facilitated, and the Committee knowingly accepted, a contribution in the
16 name of another. The Complaint further alleges that MMWP12 failed to register with the
17 Commission and file required disclosure reports despite meeting the Act's standard for political
18 committee status, and therefore violated the Act's registration, recordkeeping, and reporting
19 requirements.

20 For the reasons explained below, the Commission finds reason to believe that Mark
21 Kvamme violated 52 U.S.C. § 30122 by making a contribution in the name of another.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as
4 a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.¹ It filed
5 with the Commission as an independent-expenditure-only political committee on August 5, 2015,
6 and Susan Jones is its treasurer of record.² The Committee received the \$500,000 contribution at
7 issue in this matter on June 30, 2015.³ The Committee has reported over five million dollars in
8 independent expenditures supporting Kasich's 2016 presidential campaign.⁴

9 K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme
10 and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It
11 is treated as a partnership for tax purposes under the Internal Revenue Code.⁵ K2M owns, either
12 directly and through subsidiaries, real estate valued at approximately \$43.7 million.⁶

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13 and that MMWP12’s contribution was attributed to K2M and its owners, the Kvammes.²³

²¹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²² As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²³ Respondents assert that “for accounting purposes,” the contribution was attributed to the LLC’s sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee’s disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission’s attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report at 11, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this

1 Neither statement, however, resolves the Section 30122 inquiry: An LLC can be used as both a
2 legitimate business entity *and* a conduit,²⁴ and irrespective of how a contribution is ultimately
3 attributed, Section 30122 prohibits any person from knowingly receiving funds from another —
4 whether a natural person or an entity — to make a contribution in its own name. An LLC is a
5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.²⁵ Respondents do not address the
11 provenance of the funds that MMWP12 gave to the Committee; they do not aver that the funds it
12 contributed were not provided to it for the purpose of making political contributions. As such,

context — since the contributions at issue here were made to independent-expenditure-only committees that are not subject to the Act’s contribution limits.”); Memorandum to the Comm’n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, at 8 (Apr. 8, 2014) (“[T]he purpose of the LLC rulemaking proceedings to resolve whether LLCs would be deemed corporate under the Act *has no bearing* on whether using an LLC as a mere conduit for a contribution violates [Section 30122].”) (emphasis added).

²⁴ See First Gen. Counsel’s Report at 16, MUR 6711 (Specialty Investment Group, *et al.*) (“[T]he fact that these entities claim to engage in legitimate business does not in itself dispose of the question whether they served as conduits for contributions in the name of another in violation of Section [30122].”).

²⁵ See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); see also Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

- 1 the record does not rebut the factual basis of the allegation, and the temporal proximity of the
- 2 contribution to MMWP12's creation supports the conclusion that MMWP12 was not the true
- 3 contributor. Accordingly, the Commission finds reason to believe that Mark Kvamme violated
- 4 52 U.S.C. § 30122.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Megan Jean Browning Kvamme

MUR: 6969

4
5 **I. GENERATION OF MATTER**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 ("Commission") by the American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1). New
8 Day Independent Media Committee, Inc. ("Committee"), an independent-expenditure-only
9 political committee that supported the 2016 presidential campaign of Ohio Governor John
10 Kasich, received a \$500,000 contribution that the Committee attributed to MMWP12 LLC, a
11 limited liability company ("LLC") whose only member is another entity, K2M LLC. The
12 Complaint alleges that K2M and its two officers, Mark Kvamme and Paul Johannsen, violated
13 Section 30122 of the Federal Election Campaign Act of 1971, as amended ("Act"), by making
14 that \$500,000 contribution in the name of MMWP12. The Complaint also asserts that
15 MMWP12 knowingly facilitated, and the Committee knowingly accepted, a contribution in the
16 name of another. The Complaint further alleges that MMWP12 failed to register with the
17 Commission and file required disclosure reports despite meeting the Act's standard for political
18 committee status, and therefore violated the Act's registration, recordkeeping, and reporting
19 requirements.

20 For the reasons explained below, the Commission finds reason to believe that Megan
21 Jean Browning Kvamme violated 52 U.S.C. § 30122 by making a contribution in the name of
22 another.

UNCLASSIFIED

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as
4 a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.¹ It filed
5 with the Commission as an independent-expenditure-only political committee on August 5, 2015,
6 and Susan Jones is its treasurer of record.² The Committee received the \$500,000 contribution at
7 issue in this matter on June 30, 2015.³ The Committee has reported over five million dollars in
8 independent expenditures supporting Kasich's 2016 presidential campaign.⁴

9 K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme
10 and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It
11 is treated as a partnership for tax purposes under the Internal Revenue Code.⁵ K2M owns, either
12 directly and through subsidiarics, real estate valued at approximately \$43.7 million.⁶

¹ See Cmte. Internal Revenue Service ("IRS") Form 8871, "Political Organization – Notice of Section 527 Status." Because the Committee was organized as a nonprofit organization under Section 527 of the Internal Revenue Code, it initially filed a report with the IRS disclosing the MMWP12 contribution received on June 30, 2015. See Cmte. IRS Form 8872, "Political Organization – Report of Contributions and Expenditures," 2015 Mid-Year Report.

² Cmte. Statement of Organization at 1 (Aug. 6, 2015).

³ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁴ See Cmte. Fed. Election Comm'n Schedule E: 24/48 Hour Report of Independent Expenditures ("IE Report") (Apr. 22, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 14, 2016); IE Report (Apr. 11, 2016); IE Report (Mar. 24, 2016); IE Report (Mar. 17, 2016); IE Report (Mar. 12, 2016); IE Report (Feb. 3, 2016); IE Report (Oct. 28, 2015); IE Report (Oct. 28, 2015); IE Report (Oct. 12, 2015); IE Report (Oct. 7, 2015); IE Report (Oct. 2, 2015); IE Report (Oct. 2, 2015); IE Report (Sept. 19, 2015); IE Report (Aug. 26, 2015); IE Report (Aug. 13, 2015). The Committee has also disclosed over \$664,000 worth of independent expenditures opposing the presidential campaigns of Donald Trump, Sen. Ted Cruz, and Sen. Marco Rubio. See IE Report (Apr. 13, 2016); IE Report (Apr. 7, 2016); IE Report (Mar. 31, 2016); IE Report (Feb. 5, 2016).

⁵ Megan Kvamme Decl. ¶ 22.

⁶ K2M and a "sister company" called PAa87, Inc. own another Montana company called Great Northern Ventures LLC ("GNV"), which in turn wholly owns GFY87, LLC. See Megan Kvamme Decl. ¶ 14; MMWP12

1 MMWP12 LLC is a Montana company formed on June 29, 2015.⁷ It made a \$500,000
2 contribution to the Committee on June 30, 2015.⁸ MMWP12 is tax-disregarded under the
3 Internal Revenue Code and has no set dissolution date.⁹ Its sole member is K2M LLC. Megan
4 Kvamme is MMWP12's President and Treasurer, and Mark Kvamme is its Vice President and
5 Secretary. Mark Kvamme is a venture capitalist, serves as an officer of MMWP12, and co-owns
6 K2M. He worked at Sequoia Capital in California before cofounding Drive Capital LLC, a
7 venture capital firm in Columbus, Ohio, in 2014.¹⁰ Kvamme is also a former member of
8 Kasich's administration: He served as an Ohio state development director and then as President
9 and Interim Chief Investment Officer of JobsOhio, a private development entity promoting job
10 growth in Ohio.¹¹ Kvamme has not publicly confirmed or denied his connection to MMWP12.¹²

LLC, K2M LLC, Mark Kvamme, and Paul Johannsen Resp. ("MMWP12 Resp.") Ex. A (Nov. 23, 2015) ("GFY 87 LLC Property Holding Summary Apr-15").

⁷ See MMWP12 LLC Business Record, MT Sec'y of State, https://app.mt.gov/cgi-bin/bes/besCertificate.cgi?action=detail&bessearch=C263566&trans_id=besa1534021383874bb00 (Dec. 7, 2015); MMWP12 LLC, Dun & Bradstreet Public Record Search Result (Dec. 7, 2015).

⁸ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁹ MMWP12 Resp. at 2-3; Megan Kvamme Decl. ¶ 1, 5-10.

¹⁰ See Dan Alexander, *Top Venture Capitalists Leave Silicon Valley, Bet Their Careers On Midwest*, FORBES (May 7, 2014 6:00 AM), <http://www.forbes.com/sites/danalexander/2014/05/07/top-venture-capitalists-leave-silicon-valley-bet-their-careers-on-midwest>.

¹¹ *Id.*; see Mark Niquette, *Kasich's Bid Powered by Fans From Ohio and Lehman*, BLOOMBERG POLITICS (July 30, 2015 3:46 PM), <http://www.bloomberg.com/politics/articles/2015-07-30/kasich-s-bid-powered-by-fans-from-ohio-and-lehman>.

¹² See Compl. at 3 (quoting Zachary Mider, *Another Way to Mask Super Rich Donors*, BLOOMBERG POLITICS (Aug. 21, 2015), <http://www.bloomberg.com/politics/articles/2015-08-21/another-way-to-mask-super-rich-donors> ("Reached by phone, Kvamme is happy to share his opinion of Kasich. "I worked for the guy," he says. "I saw him do what he did in Ohio. The guy is spectacular." But Kvamme won't talk about any connection to MMWP12. "Let them report whatever they want to report," he says. "I'm not confirming or denying. It is what it is."))).

B. Legal Standard

1. Contributions in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹³ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”¹⁴ The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁵ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

¹³ 52 U.S.C. § 30101(8)(A).

¹⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁵ 52 U.S.C. § 30122. In MUR 6930 (Prakazrel “Pras” Michel, *et al.*), the Office of the General Counsel (“OGC”) concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC’s operations and investments, not a transfer of funds from the owner’s personal accounts; and (3) the owner did not seek to use the LLC to evade the Act’s disclosure requirements. Accordingly, OGC recommended that the Commission find no reason to believe that Respondents violated § 30122. *See* First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, *et al.*). The Commission was equally divided on that issue, however, and closed the file. *See* Certification, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other recently closed matters. *See* Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016).

- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁶

The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.¹⁷ Courts therefore have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the contribution,"¹⁸ recognizing that "it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift."¹⁹ Consequently, both the Act and the Commission's implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution.²⁰ This is true whether funds are advanced to another person to make a contribution in that person's name or promised as reimbursement of a solicited contribution.²¹ Because the concern of the law is the true source from which a

¹⁶ 11 C.F.R. § 110.4(b)(2)(i)-(ii).

¹⁷ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

¹⁸ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁹ *O'Donnell*, 608 F.3d at 554; *see also Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

²⁰ *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441 f)).

1 contribution to a candidate or committee originates, the Commission must look to the structure of
2 the transaction itself and the arrangement between the parties to determine who in fact “made” a
3 given contribution.²²

4 C. Discussion

5 1. The Facts Indicate that MMWP12 Was Not the True Source of the Funds 6 Contributed to the Committee

7 On balance, the record indicates that MMWP12 may not have been the true source of the
8 funds that it gave to the Committee. The most suggestive fact in the record is that the entity gave
9 funds to the Committee *the day after* it was formed: Respondents assert that MMWP12 was
10 “conceived” in April 2015, but public records show that it did not legally exist until it was
11 organized on June 29, 2015, and it gave \$500,000 to the Committee the next day, June 30, 2015.
12 Respondents state that MMWP12 was created to manage real estate properties owned by K2M,
13 and that MMWP12’s contribution was attributed to K2M and its owners, the Kvammes.²³

²¹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²² As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²³ Respondents assert that “for accounting purposes,” the contribution was attributed to the LLC’s sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee’s disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission’s attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report at 11, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this

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5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.²⁵ Respondents do not address the
11 provenance of the funds that MMWP12 gave to the Committee; they do not aver that the funds it
12 contributed were not provided to it for the purpose of making political contributions. As such,

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1 the record does not rebut the factual basis of the allegation, and the temporal proximity of the
2 contribution to MMWP12's creation supports the conclusion that MMWP12 was not the true
3 contributor. Accordingly, the Commission finds reason to believe that Megan Kvamme violated
4 52 U.S.C. § 30122.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: New Day Independent Media Committee, Inc. MUR: 6969
4 and Susan Jones in her official capacity
5 as treasurer
6

7 **I. GENERATION OF MATTER**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“Commission”) by the American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1). New
10 Day Independent Media Committee, Inc., an independent-expenditure-only political committee
11 that supported the 2016 presidential campaign of Ohio Governor John Kasich, received a
12 \$500,000 contribution that the Committee attributed to MMWP12 LLC, a limited liability
13 company (“LLC”) whose only member is another entity, K2M LLC. The Complaint alleges that
14 K2M and its two officers, Mark Kvamme and Paul Johannsen, violated Section 30122 of the
15 Federal Election Campaign Act of 1971, as amended (“Act”), by making that \$500,000
16 contribution in the name of MMWP12. The Complaint also asserts that MMWP12 knowingly
17 facilitated, and the Committee knowingly accepted, a contribution in the name of another. The
18 Complaint further alleges that MMWP12 failed to register with the Commission and file required
19 disclosure reports despite meeting the Act’s standard for political committee status, and therefore
20 violated the Act’s registration, recordkeeping, and reporting requirements.

21 For the reasons explained below, the Commission finds reason to believe that New Day
22 Independent Media Committee, Inc. and Susan Jones in her official capacity as treasurer
23 (“Committee”) violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of
24 another, and finds reason to believe that the Committee violated 52 U.S.C. §§ 30103,

30104(a), (b) by failing to timely register as a political committee and report its receipts to the Commission.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

New Day Independent Media Committee, Inc. was originally formed on May 28, 2015, as a tax-exempt nonprofit organization under Section 527 of the Internal Revenue Code.¹ It filed with the Commission as an independent-expenditure-only political committee on August 5, 2015, and Susan Jones is its treasurer of record.² The Committee received the \$500,000 contribution at issue in this matter on June 30, 2015.³ The Committee has reported over five million dollars in independent expenditures supporting Kasich's 2016 presidential campaign.⁴

K2M LLC, is a Montana company, organized on May 7, 2002, in which Mark Kvamme and his wife, Megan Kvamme, each have a 50% ownership interest held through living trusts. It

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1 is treated as a partnership for tax purposes under the Internal Revenue Code.⁵ K2M owns, either
2 directly and through subsidiaries, real estate valued at approximately \$43.7 million.⁶

3 MMWP12 LLC is a Montana company formed on June 29, 2015.⁷ It made a \$500,000
4 contribution to the Committee on June 30, 2015.⁸ MMWP12 is tax-disregarded under the
5 Internal Revenue Code and has no set dissolution date.⁹ Its sole member is K2M LLC. Megan
6 Kvamme is MMWP12's President and Treasurer, and Mark Kvamme is its Vice President and
7 Secretary. Mark Kvamme is a venture capitalist, serves as an officer of MMWP12, and co-owns
8 K2M. He worked at Sequoia Capital in California before cofounding Drive Capital LLC, a
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10 Kasich's administration: He served as an Ohio state development director and then as President
11 and Interim Chief Investment Officer of JobsOhio, a private development entity promoting job
12 growth in Ohio.¹¹ Kvamme has not publicly confirmed or denied his connection to MMWP12.¹²

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⁶ K2M and a "sister company" called PAa87, Inc. own another Montana company called Great Northern Ventures LLC ("GNV"), which in turn wholly owns GFY87, LLC. See Megan Kvamme Decl. ¶ 14; MMWP12 LLC, K2M LLC, Mark Kvamme, and Paul Johannsen Resp. ("MMWP12 Resp.") Ex. A (Nov. 23, 2015) ("GFY 87 LLC Property Holding Summary Apr-15").

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⁸ Cmte. Amended 2015 Year-End Report at 8 (Mar. 11, 2016).

⁹ MMWP12 Resp. at 2-3; Megan Kvamme Decl. ¶ 1, 5-10.

¹⁰ See Dan Alexander, *Top Venture Capitalists Leave Silicon Valley, Bet Their Careers On Midwest*, FORBES (May 7, 2014 6:00 AM), <http://www.forbes.com/sites/danalexander/2014/05/07/top-venture-capitalists-leave-silicon-valley-bet-their-careers-on-midwest>.

¹¹ *Id.*; see Mark Niquette, *Kasich's Bid Powered by Fans From Ohio and Lehman*, BLOOMBERG POLITICS (July 30, 2015 3:46 PM), <http://www.bloomberg.com/politics/articles/2015-07-30/kasich-s-bid-powered-by-fans-from-ohio-and-lehman>.

B. Legal Standard

1. Contributions in the Name of Another

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹³ The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”¹⁴ The law prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.¹⁵ The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

¹² See Compl. at 3 (quoting Zachary Mider, *Another Way to Mask Super Rich Donors*, BLOOMBERG POLITICS (Aug. 21, 2015), <http://www.bloomberg.com/politics/articles/2015-08-21/another-way-to-mask-super-rich-donors> (“Reached by phone, Kvanme is happy to share his opinion of Kasich. “I worked for the guy,” he says. “I saw him do what he did in Ohio. The guy is spectacular.” But Kvanme won’t talk about any connection to MMWP12. “Let them report whatever they want to report,” he says. “I’m not confirming or denying. It is what it is.””)).

¹³ 52 U.S.C. § 30101(8)(A).

¹⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. See 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

¹⁵ 52 U.S.C. § 30122. In MUR 6930 (Prakazrel “Pras” Michel, et al.), the Office of the General Counsel (“OGC”) concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC’s operations and investments, not a transfer of funds from the owner’s personal accounts; and (3) the owner did not seek to use the LLC to evade the Act’s disclosure requirements. Accordingly, OGC recommended that the Commission find no reason to believe that Respondents violated § 30122. See First Gen. Counsel’s Report, MUR 6930 (Prakazrel “Pras” Michel, et al.). The Commission was equally divided on that issue, however, and closed the file. See Certification, MUR 6930 (Prakazrel “Pras” Michel, et al.) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other recently closed matters. See Certification, MUR 6485 (W Spann LLC, et al.) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, et al.) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, et al.) (Feb. 24, 2016).

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or
- (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.¹⁶

The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.¹⁷ Courts therefore have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the contribution,"¹⁸ recognizing that "it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift."¹⁹ Consequently, both the Act and the Commission's implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution.²⁰ This is true whether funds are advanced to another person to make a contribution in that person's name or promised as reimbursement of a

¹⁶ 11 C.F.R. § 110.4(b)(2)(i)–(ii).

¹⁷ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

¹⁸ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁹ *O'Donnell*, 608 F.3d at 554; see also *Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

²⁰ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

1 solicited contribution.²¹ Because the concern of the law is the true source from which a
2 contribution to a candidate or committee originates, the Commission must look to the structure of
3 the transaction itself and the arrangement between the parties to determine who in fact “made” a
4 given contribution.²²

5 **C. Discussion**

6 1. The Facts Indicate that MMWP12 Was Not the True Source of the Funds
7 Contributed to the Committee

8 On balance, the record indicates that MMWP12 may not have been the true source of the
9 funds that it gave to the Committee. The most suggestive fact in the record is that the entity gave
10 funds to the Committee *the day after* it was formed: Respondents assert that MMWP12 was
11 “conceived” in April 2015, but public records show that it did not legally exist until it was
12 organized on June 29, 2015, and it gave \$500,000 to the Committee the next day, June 30, 2015.
13 Respondents state that MMWP12 was created to manage real estate properties owned by K2M,
14 and that MMWP12’s contribution was attributed to K2M and its owners, the Kvammes.²³

²¹ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

²² As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²³ Respondents assert that “for accounting purposes,” the contribution was attributed to the LLC’s sole member, K2M, and then ultimately to Megan and Mark Kvamme. Megan Kvamme Decl. ¶ 22, 23. The available record, which includes the Committee’s disclosure reports filed with the Commission, does not support that assertion. Nevertheless, because MMWP12 is tax-disregarded and K2M is taxed as a partnership under the Internal Revenue Code, *see* MMWP12 Resp. at 2, 3, Megan Kvamme Decl. ¶ 9, 22, it does not appear that the contribution violated the Commission’s attribution rules, *see* 11 C.F.R. §§ 110.1(g), (e). However, that conclusion does not resolve whether the contribution violated Section 30122 of the Act, as the attribution rules address a different concern — contribution source and amount limits — not implicated in this context. *See* First Gen. Counsel’s Report

1 Neither statement, however, resolves the Section 30122 inquiry: An LLC can be used as both a
2 legitimate business entity *and* a conduit,²⁴ and irrespective of how a contribution is ultimately
3 attributed, Section 30122 prohibits any person from knowingly receiving funds from another —
4 whether a natural person or an entity — to make a contribution in its own name. An LLC is a
5 separate “person” under the Act and is entitled, under prevailing law, to make contributions in its
6 own name, but it must be the true source of the funds that it contributes.

7 The record does not establish how MMWP12 obtained the \$500,000 that it gave the
8 Committee, or for what purpose. But the extremely close temporal proximity between the LLC’s
9 creation and the contribution strongly suggests that those funds were directed to MMWP12 for
10 the specific purpose of making a political contribution.²⁵ Respondents do not address the
11 provenance of the funds that MMWP12 gave to the Committee; they do not aver that the funds it

at 11, MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (“The LLC attribution regulations were implemented to address a concern regarding the use of LLCs to circumvent contribution limits; that concern, however, does not apply in this context — since the contributions at issue here were made to independent-expenditure-only committees that are not subject to the Act’s contribution limits.”); Memorandum to the Comm’n from Daniel A. Petalas, Assoc. Gen. Counsel for Enforcement, at 8 (Apr. 8, 2014) (“[T]he purpose of the LLC rulemaking proceedings to resolve whether LLCs would be deemed corporate under the Act *has no bearing* on whether using an LLC as a mere conduit for a contribution violates [Section 30122].”) (emphasis added).

²⁴ See First Gen. Counsel’s Report at 16, MUR 6711 (Specialty Investment Group, *et al.*) (“[T]he fact that these entities claim to engage in legitimate business does not in itself dispose of the question whether they served as conduits for contributions in the name of another in violation of Section [30122].”).

²⁵ See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) (“[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.”); *see also* Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel “Pras” Michel, *et al.*) (Apr. 1, 2016) (“An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor.”).

1 contributed were not provided to it for the purpose of making political contributions. As such,
2 the record does not rebut the factual basis of the allegation, and the temporal proximity of the
3 contribution to MMWP12's creation supports the conclusion that MMWP12 was not the true
4 contributor.

5 2. The Facts Indicate that the Committee May Have Knowingly Accepted a
6 Contribution in the Name of Another

7 The Complaint alleges that the Committee "was almost certainly aware" that MMWP12
8 was not the true source of the \$500,000 contribution,²⁶ and the factual record supports that
9 claim. Megan Kvamme avers that on June 29, 2015 — the day that MMWP12 was formed and
10 one day before the Committee received the \$500,000 contribution — she discussed supporting
11 Kasich's presidential campaign with Brooke Bodney, a representative of the Committee, and the
12 Committee's legal counsel. Kvamme asserts that during that discussion, she informed the
13 Committee that an LLC would be making the contribution, which she felt might raise possible
14 disclosure issues.²⁷ In its Response, the Committee did not address the substance of the
15 allegation raised in the Complaint or the alleged discussion with Megan Kvamme. Instead, the
16 Committee summarily argued that it "simply does not accept" contributions in the name of
17 another, citing the boilerplate language on its contribution form.²⁸ The available record raises a
18 reasonable inference that the Committee knowingly accepted a contribution in the name of
19 another. Accordingly, the Commission finds reason to believe that New Day Independent Media

²⁶ Compl. at 3–4; *see* Cmte. Resp. at 2

²⁷ *See* Megan Kvamme Decl. ¶ 19, 23.

²⁸ Cmte. Resp. at 2, Ex. A.

Committee, Inc. and Susan Jones in her official capacity as treasurer violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another.

3. The Committee Did Not Timely Register as a Political Committee or Properly Report its Receipts to the Commission

The Committee initially organized as a Section 527 organization under the Internal Revenue Code. It reported to the Internal Revenue Service that it received two contributions totaling \$600,000 — including the contribution at issue in this matter — on June 30, 2015.²⁹ However, the Committee did not meet its obligations under the Act to register as a political committee and report those two contributions to the Commission. The Committee's receipt of \$600,000 in contributions triggered political committee status on June 30, 2015,³⁰ and it was required to register with the Commission within 10 days, or by July 10, 2015.³¹ The Committee was therefore required to file a 2015 Mid-Year Report disclosing the \$600,000 in contributions that it received on June 30, the last day of the reporting period. That report was due by July 31, 2015, but the Committee never filed it.

After it registered with the Commission on August 5, 2015, the first periodic disclosure report that the Committee filed was its 2015 Year-End Report. That report, however, did not disclose the MMWP12 contribution and several other contributions that the Committee received before it registered with the Commission.³² Instead, the Committee disclosed a beginning cash-

²⁹ See Cmte. IRS Form 8872, 2015 Mid-Year Report. The second contribution reportedly received on June 30, 2015 was \$100,000 from an attorney in Pacific Palisades, CA.

³⁰ See 52 U.S.C. § 30101(4)(A).

³¹ *Id.* § 30103(a).

³² See *id.* § 30104(a), (b). In its 2015 Year-End Report, the Committee did not disclose the two contributions it received on June 30, 2015, or the contributions totaling \$1,755,000 that it received between July 1, 2015, and July 31, 2015. See Cmte. IRS Form 8872, 2015 Year-End Report; Cmte. 2015 Year-End Report (Jan. 31, 2016). Instead, it reported an unexplained beginning cash-on-hand balance, prompted RAD to send the Committee an RFAI

1 on-hand balance with no corresponding entries to explain the provenance of those funds, which
2 amounted to over \$2.3 million.³³ As a result, the sources of those funds were not properly
3 reported to the Commission and the voting public until the Committee amended its report on
4 March 11, 2016; by that point, the Committee had made over \$4.4 million in independent
5 expenditures supporting Kasich's presidential campaign.³⁴ In sum, because the Committee did
6 not meet its disclosure obligations, the Commission learned of the MMWP12 contribution over
7 seven months later than the Act required, *i.e.*, on March 11, 2016, instead of July 31, 2015.³⁵
8 Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C.
9 §§ 30103, 30104(a), (b).

on Feb. 5, 2016. In response to the RFAI, the Committee amended its 2015 Year-End Report to account for its beginning cash-on-hand balance of \$2,344,669.62, which included the \$500,000 it received from MMWP12. *See* Cmte. Amended 2015 Year-End Report at 8.

³³ Cmte. 2015 Year-End Report (Jan. 31, 2016).

³⁴ During this period, the Committee also reported making \$38,190 in independent expenditures to oppose the presidential candidacy of Marco Rubio. *See* IE Report (Feb 5, 2016).

³⁵ During this period, over 25 states and territories held presidential primaries or caucuses to elect delegates to the 2016 Republican National Convention.